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IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF OREGON
EUGENE DIVISION

BEAVER STATE MOTORCYCLES, LLC, and)	
OREGON TRAILS MOTORCYCLES, LLC,)	
)	
Plaintiff,)	Civil No. 10-6188-HO
)	
)	
v.)	ORDER
)	
BMW (US) HOLDING CORP, and BMW OF)	
NORTH AMERICA, LLC,)	
)	
Defendants.)	
)	

Plaintiffs brought this action alleging violation of ORS § 650.158 seeking reimbursement for warranty work, service and supply expenses and parts at rates charged to non-warranty customers. After the filing of competing motions for summary judgment, defendant prevailed and obtained a judgment in its favor. Plaintiffs have appealed that judgment. Defendant now seeks an award of fees and costs. Defendant's cost bill is allowed in the amount of \$1,594.45.¹

¹Plaintiff objects to \$250 for service of summons and subpoena contending that the invoices attached to the cost bill to not
(continued...)

In an action under ORS § 650.158, the court may award reasonable attorney fees and costs to the prevailing party. ORS § 650.170(3). Defendant seeks \$115,935 in fees and \$2,335.56 in expenses. Although the court is mindful of the considerable efforts in defending this case necessitated by plaintiff's litigation strategy, in considering the relevant factors,² the court exercises its discretion to deny an award of fees.

¹(...continued)

demonstrate summons and subpoenas were served and notes that no summons and subpoenas were served. Accordingly, the cost bill has been reduced by \$250.

²A court shall consider the following factors in determining whether to award attorney fees in any case in which an award of attorney fees is authorized by statute and in which the court has discretion to decide whether to award attorney fees:

(a) The conduct of the parties in the transactions or occurrences that gave rise to the litigation, including any conduct of a party that was reckless, willful, malicious, in bad faith or illegal.

(b) The objective reasonableness of the claims and defenses asserted by the parties.

(c) The extent to which an award of an attorney fee in the case would deter others from asserting good faith claims or defenses in similar cases.

(d) The extent to which an award of an attorney fee in the case would deter others from asserting meritless claims and defenses.

(e) The objective reasonableness of the parties and the diligence of the parties and their attorneys during the proceedings.

(f) The objective reasonableness of the parties and the diligence of the parties in pursuing settlement of the dispute.

(g) The amount that the court has awarded as a prevailing party fee under ORS 20.190.


(h) Such other factors as the court may consider appropriate under the circumstances of the case.

ORS § 20.075(1).

CONCLUSION

For the reasons stated above, defendant's cost bill (#60) is granted in the amount of \$1,594.45 and defendant's motion for attorney fees (#57) is denied.

DATED this 23rd day of September, 2011.


United States District Judge